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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937.

No. 566

GUARANTY TRUST COMPANY OF NEW YORK,
Petitioner

against

UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT.

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THE BALLOU PRESS NEW YORK

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Emperor of Brazil v. Robinson (1837), 5 Dowl. 522	20
Fink v. O'Neil, 106 U. S. 272 (1882)	16, 30

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French Republic v. Government of the Serb-Croat-Slovene Kingdom, July 12, 1929, 2 Hudson World Court Reports 344 20
French Republic v. Saratoga Vichy Spring Co., 191 U. S. 427 (1903) 6, 7, 16
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Gouvernement espagnol v. Veuve et heritiers d'Aguado (Paris Court of Appeal 1867), Dalloz 1867, II. 49..20, 23
Government of Bolivia v. Banco Guarantizador de Valores, Gaceta de los Tribunales 1896 (Chile), Vol. I, p. 335..... 25
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Maryland v. West Virginia, 217 U. S. 142 (1910)..... 29
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U. S. v. Williams, 5 McLean 133, Fed. Cas. 16721 (1850) 15
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Statutes Cited.

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Mexico, Civil Code for Federal District and Territories Arts. 25, 1137, 1148	24
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Panama, Civil Code Arts. 64, 1670	24
Paraguay, Civil Code Arts. 33, 34, 3951	24
Peru, Law of October 4, 1901, Art. 1, Law No. 2247, December 5, 1902	24
Portugal, Civil Code Art. 516	23
Russia, Civil Laws Vol. X, Part 1, Art. 694 Note Annex Art. 1	23
Civil Code Art. 44 as amended by Decree of December 10, 1934, Coll. of Law USSR (1934) No. 43, Art. 258	23
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Authorities Cited.

Ernest Angell, "Sovereign Immunity," 35 Yale Law Journal 150 28
Anuario de la Legislacion Peruana (1928)..... 24
Blackstone's Commentaries (Chase 3rd ed. 1903).... 22
Comyn's Digest 15
Lasala-Llanas, Sistema de Derecho Civil International e Interregional (Madrid 1933) 25
Pan-American Code of Private International Law Arts. 31, 229, 231 23
Rules of Prescription adopted by Institute of International Law, Annuaire (1925) p. 558; 19 Am. Journ. Int. Law 760 29
Selden, Table Talk (F. Pollock Ed.) 22
Treaty Information Cumulative Index (Washington 1937) 24
Westlake Private International Law (7th ed. 1925).... 22
Wharton International Law Digest (2nd ed.)..... 29
Yale Law Journal
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937.

GUARANTY TRUST COMPANY OF NEW YORK, Petitioner, against UNITED STATES OF AMERICA.	No.

PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

Guaranty Trust Company of New York, a New York corporation and the defendant in the above-entitled action, petitions for a writ of certiorari to review a decision of the Circuit Court of Appeals for the Second Circuit rendered therein August 23, 1937 (one judge dissenting), which reversed a judgment entered by the United States District Court for the Southern District of New York on November 5, 1936, dismissing the complaint.

The Action.

The action is at law, and was instituted by the United States in the District Court for the Southern District of New York on September 21, 1934, to recover a bank account. The account had in 1917 stood with the defendant to the credit of the Ministry of Finance of the Government of the

State of Russia. The United States asserts title to it by virtue of the assignment of the Soviet Government to the United States effected by the exchange of letters between President Roosevelt and the Soviet Commissar for Foreign Affairs on November 16, 1933 (R., 5).

Pursuant to the New York practice the defendant moved upon affidavits and upon the depositions of the Russian Ambassador and his Financial Attaché to dismiss the complaint upon the single ground of the statute of limitations. This motion was granted by the District Court, and judgment entered in favor of the defendant on November 5, 1936. The United States appealed, and the decision of the Circuit Court of Appeals reversing that judgment is that which the petitioner seeks to review in this Court.

Questions Presented.

1. Whether in an action at law in a United States court in New York a foreign sovereign plaintiff is subject to the defense of limitations established by the statute law of New York.

2. Whether the indebtedness of a New York bank to a foreign state, in the form of a deposit account, is entitled to any peculiar privilege or exemption of sovereignty in a municipal court of the United States whose jurisdiction is invoked by the depositor.

3. Whether the assignment of Russian funds in the United States executed by the Soviet Government to the United States on November 16, 1933 overrides the statute of limitations of the State of New York.

Summary Statement of Matter Involved.

The petitioner Guaranty Trust Company of New York is a corporation engaged in the business of banking in the City and State of New York. In July, 1916 there was opened with

it by the Imperial Russian Government a deposit account in the name of Section Etrangère Ministère des Finances (R., 281-2), meaning the Foreign Section of the Ministry of Finance of that Government. This account was in every respect an ordinary commercial deposit. While originating as the proceeds of a loan by a group of New York banks to the Imperial Russian Government (R., 368-369), it was overdrawn on July 2, 1917 (R., 126), and the entire balance thereafter created and now claimed in this action by the United States as assignee of the State of Russia is the proceeds of a payment or deposit by the Russian Financial Attaché to petitioner on July 12, 1917 (R., 126, 179, 282). The conditions as to interest governing the account were those of the ordinary commercial account (R., 402). Drawings thereon were made by letter or cable from the Foreign Section (R., 372).

The Soviet Government seized control from the previously recognized Russian Government on November 7, 1917. On December 12, 1917, the balance in the account Section Etrangère Ministère des Finances was $4,976,722.78 (R., 5). This with interest is the amount now claimed by the United States as assignee of the State of Russia.

The petitioner had various accounts with Russian banks at the time of the Soviet Revolution. From its representative in Russia it ascertained in February, 1918 that the Soviet Government had terminated the existence of the Russian commercial banks by nationalization, that it had repudiated the public debt, and that the petitioner's accounts with the Russian banks would not be paid (R., 127). Those banks also had accounts in dollars with the petitioner in New York. On February 25, 1918, the petitioner consolidated the accounts with it of the former Russian banks and consolidated its accounts abroad with those banks, entering both debit and credit balances of all the accounts in a single new account entitled "Russian Government Account", and placed to the credit of that account the balance formerly in the Section Etrangère Ministère des Finances account (R., 128-

129). As part of that transaction the account in suit was definitely closed on the books of the petitioner on February 25, 1918 (R., 129).

The purpose of the entries was to avail of the account in suit to pay the petitioner's claim against the Russian Government for its accounts in Russia. The total amount owed by the Russian Government to the petitioner, according to the books of the latter, was $9,000,000 at the time of the consolidation, while the total owed by the petitioner to the Russian Government, including the account in suit, was $7,226,000 (R., 129). On March 14, 1918, the closing of the account in suit and the creation of the consolidated account were approved by the Executive Committee of the Board of Directors of the petitioner (R., 129-130).

The Soviet decree of nationalization, the making by the petitioner of the entries described, and the formal approval thereof by the Directors were found as facts by the District Court, and were indeed undisputed (R., 419-420). The Circuit Court of Appeals did not disturb these findings.

The New York statute of limitations as construed by the highest court of New York causes limitations to run upon an unequivocal repudiation or denial of liability by a bank as well as upon a demand and refusal; and this point was conceded below (R., 456; 91 F. [2d] 898, 899). *Tillman* v. *Guaranty Trust Company* (1930) 253 N. Y. 95.

After November, 1917 and before June 30, 1922, the Ambassador and the Financial Attaché of the then recognized Russian Government made various attempts to obtain possession of the account in suit for the purpose and the use of their Government. By them, or on their behalf, inquiries and demands were made, and to them notice was communicated by the petitioner, directly and indirectly, of the consolidation of accounts above described, whereby the account in suit was applied to payment of the petitioner's claim against the State of Russia. The petitioner denied any liability with respect to the account to the Ambassador as representing his Government. The District Court found two

separate occasions on which the petitioner communicated to the Ambassador its repudiation of liability (R., 423-424), and four separate occasions when it communicated such repudiation to the Financial Attaché who was also at the respective times Chargé d'Affairs (R., 424-428). The Circuit Court of Appeals did not disturb these findings.

The Russian Ambassador and Financial Attaché here mentioned represented the then recognized Government of Russia. They transacted business as such with the United States Government and with American citizens. Their authority to institute and maintain suits on behalf of the State of Russia has heretofore been fully determined. *Lehigh Valley R. Co.* v. *State of Russia,* 21 F. (2d) 396, 400, certiorari denied 275 U. S. 571, writ of prohibition denied 265 U. S. 573. See opinion below at R., 457, 91 F. (2d) at 899.

The Soviet assignment to the United States in express terms left undisturbed non-judicial acts done in good faith by American nationals with the Ambassador and Financial Attaché here involved. *State of Russia* v. *National City Bank,* 69 F. (2d) 44, 48, certiorari denied 299 U. S. 563 with respect to judgment reported in 83 F. (2d) 236.

The applicable New York statute of limitations is six years from the accrual of the cause of action. On the facts found the District Court concluded that the cause of action in favor of the State of Russia accrued at the latest in 1922, that the petitioner's repudiation and denial communicated to the Ambassador were communicated to the State of Russia by virtue of his authority to sue, that the State of Russia was barred with respect to this action by 1928, that recognition by the United States on November 16, 1933 of the Soviet Government which took power on November 7, 1917 did not destroy the defense as perfected against the State of Russia through the preceding government, and that the United States upon taking an assignment of the claim took it subject to the defense (R., 416-441). He, therefore, dismissed the complaint.

The Circuit Court of Appeals reversed this judgment with opinions by Judge Swan and Judge Manton, Judge Chase dissenting without opinion (R., 455-465). These two opinions placed the reversal upon an extremely narrow ground,[1] left undisturbed the conclusions of the District Court on all other matters of law, and left undisturbed all its findings of fact. The majority thought that a foreign sovereign could not be bound by a municipal statute of limitations. They said that no direct authority upon the subject existed. They dismissed as dicta language used by this Court in *French Republic* v. *Saratoga Vichy Spring Co.*, 191 U. S. 427, 437, and by other courts to the effect that a foreign sovereign is subject to limitations, and concluded that dicta of this Court in other cases require a contrary result. They held that exemption from the statute of limitations of the forum is a necessary part of the immunity due to a sovereign state, and that in this respect a foreign sovereign is entitled to the same treatment as the local sovereign. They held that these conclusions were authorized by the language used by this Court in *United States* v. *Belmont*, 301 U. S. 324, and that due effect could not be given to the assignment of the Soviet Government to the United States without overriding the state statutes of limitations.

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[1] The Court pointedly refrained from basing its decision upon what was perhaps the principal ground urged by the United States in behalf of its appeal, namely that the recognition of the Soviet government had by retroactivity wiped out acts and the legal effect of acts done in this country by the accredited representatives of the government theretofore recognized on behalf of the State of Russia. The reason the Court did not accept this contention is no doubt that the terms of the Soviet assignment preclude it (p. 5 above), and that the Court had itself previously determined that the doctrine of retroactivity would be confined, in the case of Russia, to acts performed by the Soviet Government "in its own territory." *Lehigh Valley R. Co.* v. *State of Russia*, 21 F. (2d) 396, 401, certiorari denied 275 U. S. 571, writ of prohibition denied 265 U. S. 578. Judgments aggregating $984,104.62 were paid in 1927 in consequence of that decision (R., 395-6, 398). In every case in which the doctrine of retroactivity has been applied by this Court or by any other court the subject-matter to which it was applied was at the time within the territory of the foreign sovereign in question.

Reasons why a Writ of Certiorari Should Issue.

1. The Circuit Court of Appeals has decided an important question of general law in a way both untenable and conflicting with the weight of authority.

The exemption accorded by this decision to foreign sovereigns with respect to their business dealings in this country has never before been accorded to a foreign sovereign state by the municipal tribunals of any country in the world, is contrary to the rule of decision indicated by this Court in *French Republic* v. *Saratoga Vichy Spring Co.*, 191 U. S. 427, is not required by the theory upon which an exemption from limitations has regularly been accorded to the *local* sovereign by the English and the American courts, and is contrary to judicial practice throughout the world. The decision below thus confers a privilege upon foreign sovereigns as claimants in the courts of the United States and of every state in the Union which would not in the reverse situation be accorded to the United States as suitor in the courts of any other nation.

The conclusion reached by the Circuit Court of Appeals is not required by the concept of sovereign immunity as heretofore understood, for there is an established limitation upon that concept in that the foreign sovereign plaintiff must with respect to the subject-matter upon which he invokes the jurisdiction of any municipal court, accept the status in that court of an ordinary private litigant. The only cases in this country which have considered the question, indicate that the foreign sovereign plaintiff is bound by the statute of limitations.

By virtue of the rule which the Circuit Court of Appeals has adopted in this case, all the transactions of American banks, business houses, citizens and corporations with foreign sovereigns, from the present time back to 1787, are exposed to question and opened to litigation in disregard of the principle of repose which both the decisions of this Court and international practice have recognized to be of the essence of sound policy. This Court has in the course of litigation

between the States of the Union consistently applied as wise and necessary the principle of the extinction of rights by the lapse of time. It has been consistently recognized by this Court that the barring of stale claims is in the interest of justice. Recognition of the same principle is general in international tribunals, even in the absence of an applicable statutory period of limitation or prescription.

It is especially unfortunate that a new development in the doctrine of sovereign immunity should be put forward in the form of the rule now announced by the Circuit Court of Appeals at the moment when the governments of so many states have taken over so great a proportion of the conduct of the business and affairs which formerly belonged to private individuals.

2. The Circuit Court of Appeals has decided an important question of Federal law which has not been, but should be, settled by this Court, and has decided it in a way contrary to the principle of decision heretofore indicated by this Court for that question.

In reaching its conclusion the Circuit Court of Appeals has misconceived and misapplied certain language of this Court used collaterally and on a quite different issue in *United States* v. *Belmont*, 301 U. S. 324. The Circuit Court of Appeals also misinterpreted an expression used by this Court in *United States* v. *Nashville, etc. R. Co.*, 118 U. S. 120, 125, to the effect that the rule *nullum tempus occurrit regi* is "applicable to all governments alike." This expression relates merely to the origin of the *nullum tempus* rule in English law, denotes that it was not part of the royal prerogative and so passed to the United States as a rule applicable to the local sovereign, and has nothing to do with the question whether foreign sovereigns are entitled to the same privilege.

With respect to the Soviet assignment of November 16, 1933, this Court has twice at the instance of the United States granted certiorari to review decisions below. *U. S.* v. *Belmont*, certiorari granted 300 U. S. 641; *U. S.* v. *Bank of*

New York & Trust Co., certiorari granted 296 U. S. 558. In its petition for certiorari in the *Belmont* case the United States said[1] that there were pending in the state courts or local federal courts about fifteen suits, involving approximately $8,000,000, in which the United States Government seeks to enforce the assignment in question. For the guidance of the lower courts in that important body of litigation, it is essential that the rule announced by the Circuit Court of Appeals, if there is a reasonable probability of its being erroneous, be immediately reviewed by this Court.

It is respectfully submitted, upon the brief following, that the result reached below is almost certainly erroneous.

3. The decision of the Circuit Court of Appeals is conclusive of the question of limitations presented by this petition, and that question would be decisive of the case if decided by this Court in accordance with the weight of authority as shown by the following brief.

The question of limitations is fully presented by this record and is entirely separate from the only other question which would remain to be tried between the parties if the defense of limitations were decided adversely to the petitioner, viz., the petitioner's set-off against the State of Russia. But it is fitting and necessary that the petitioner's rights in respect of the defense of limitations be finally determined before it be put to trial on the question of set-off, because the very purpose of limitations is to avoid the litigation of stale claims, after the destruction of documentary evidence and the death of witnesses. It is now twenty years since the revolution in Russia which resulted in the seizure and nationalization of the Russian banks. There followed a long period of internal disturbance and civil war. In the interval witnesses have died or disappeared, and records been lost or destroyed. It is surely reasonable for the petitioner to ask that its rights under the statute of the forum be finally determined before it be sent to trial on those very matters

[1] November 1936; p. 9.

which are intended to be protected by the doctrine of limitations from belated inquiry.

The power of this Court to review by certiorari even interlocutory orders is unquestioned. *Gay* v. *Ruff* (1934), 292 U. S. 25, 30-1. The present is an unusual case involving questions of general and international importance.

4. The Circuit Court of Appeals has decided an important question of local law in a way deemed to be in conflict with applicable local decisions.

This Court under the Rules of Decision Act applies the New York statute of limitations as it is construed by the highest court of New York. The highest court of New York has, in *United States* v. *Brown*, 247 N. Y. 211, 218, and in *Royal Italian Government* v. *International Committee of Y. M. C. A.*, 273 N. Y. 468, clearly intimated, if not decided, that the local statute of limitations binds foreign sovereign states.

Prayer.

For the foregoing reasons, which are developed in more detail in the accompanying brief, your petitioner prays that a writ of certiorari issue out of this Court to the United States Circuit Court of Appeals for the Second Circuit commanding said Court to certify and send to this Court on a day to be determined a full and complete transcript of the record of all of the proceedings of such Circuit Court of Appeals had in this case, to the end that this cause may be reviewed and determined by this Court; that the judgment of the Circuit Court of Appeals be reversed; and that the petitioner be granted such other and further relief as is proper.

New York, N. Y., November 8, 1937.

GUARANTY TRUST COMPANY OF NEW YORK,
By JOHN W. DAVIS,
Its Attorney.

BRIEF IN SUPPORT OF PETITION.

Opinions Below.

The opinion of the United States District Court for the Southern District of New York (R., 416-441) is not reported. The opinion of the United States Circuit Court of Appeals for the Second Circuit (R., 455-465) is reported in 91 F. (2d) 898.

Jurisdiction.

The judgment of the Circuit Court of Appeals for the Second Circuit was entered August 23, 1937 (R., 466). The jurisdiction of this Court is invoked under the provisions of section 240 (a) of the Judicial Code, 28 United States Code, § 347a, as amended by the Act of February 13, 1925.

Statement of the Case.

A summary statement of the facts is given in the petition, pages 2-6 above.

Statutes Involved.

The Rules of Decision Act, 28 United States Code § 725, Rev. Stat. § 721, provides:

> *"Laws of States as rules of decision.* The laws of the several States, except where the Constitution, treaties, or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the courts of the United States, in cases where they apply."

The Conformity Act, 28 United States Code § 724, Rev. Stat. § 914, provides:

> *"Conformity to practice in State courts.* The practice, pleadings, and forms and modes of proceeding in civil causes, other than equity and admiralty causes, in the district courts, shall conform, as near as may be, to the practice, pleadings, and forms and modes of proceeding existing at the time in like causes in the courts of record of the State within which such district courts are held, any rule of court to the contrary notwithstanding."

The Civil Practice Act of the State of New York § 48 provides, so far as material:

> "The following actions must be commenced within six years after the cause of action has accrued:
>
> 1. An action upon a contract obligation or liability express or implied, except a judgment or sealed instrument."

The Civil Practice Act § 15 provides, so far as material:

> "Where a right exists, but a demand is necessary to entitle a person to maintain an action, the time within which the action must be commenced must be computed from the time when the right to make the demand is complete except in one of the following cases:
>
> * * * * *
>
> 2. Where there was a deposit of money not to be repaid at a fixed time but only upon a special demand, or a delivery of personal property not to be returned specifically or in kind at a fixed time or upon a fixed contingency, the time must be computed from the demand."

Rule 107 of the Rules of Civil Practice of the State of New York provides, so far as material:

> "Within twenty days after the service of the complaint, the defendant may serve notice of motion for

judgment dismissing the complaint, or one or more causes of action stated therein, on the complaint and affidavit stating facts tending to show:

* * * * *

6. That the cause of action did not accrue within the time limited by law for the commencement of an action thereon."

Specification of Errors to be Urged.

1. The Circuit Court of Appeals erred in holding that the statute of limitations of the forum does not bar a foreign sovereign suitor therein.

2. The Circuit Court of Appeals erred in holding that the giving of due effect to the Soviet assignment to the United States required it to disregard the statute of limitations of the forum.

3. The Circuit Court of Appeals erred in disregarding the high public policy which attaches in both municipal and international law to the principle of repose embodied in prescription and limitations.

POINT I.

The Circuit Court of Appeals erred in holding that the statute of limitations of the forum does not bar a foreign sovereign suitor therein.

It has never heretofore been decided in any court that the rule of limitations constituting part of its procedure could not be invoked and availed of by a defendant against whom a foreign sovereign pursued his remedy in that court.

A. CONCEDEDLY THE UNITED STATES AS ASSIGNEE OF THE FOREIGN SOVEREIGN'S CLAIM IS BARRED IF ITS ASSIGNOR WAS BARRED AT THE TIME OF THE ASSIGNMENT.

The petitioner's proof in the District Court showed the accrual of a cause of action for the account in suit on behalf of the State of Russia prior to June 30, 1922 (R., 424, 431; R., 456, 91 F[2d] at 899). The statute of limitations had thus run against the State of Russia, if at all, by June 30, 1928, whereas the claim was not acquired by the United States until November 16, 1933 (R., 5). It is established on authority not heretofore disputed that the claim, if barred in the hands of the State of Russia, was barred in the hands of the United States as its assignee.[1] The District Judge regarded this point as conceded by the United States (R., 417). He also regarded it as clearly true (R., 417) and the Circuit Court of Appeals did not question it (R., 456, 460; 91 F[2d] at 899, 900). The principle likewise undisputed, that the statute of limitations does not run against the United States itself[2] is therefore out of the case.

The only question in the case is whether as matter of law limitations ran against the State of Russia and had become perfected by or before November 16, 1933.

B. THE CIRCUIT COURT OF APPEALS ERRED IN APPLYING TO A FOREIGN SOVEREIGN THE PRINCIPLE UPON WHICH THE LOCAL SOVEREIGN HAS HERETOFORE BEEN HELD EXEMPT FROM LIMITATIONS AND WHICH IN ITS NATURE IS APPLICABLE TO THE LOCAL SOVEREIGN ONLY.

1. In every case in which, so far as we can find, a sovereign state has been held exempt from the running of limita-

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[1] *U. S.* v. *Buford*, 3 Pet., 12, 29 (1830); *U. S.* v. *Nashville &c. R. Co.*, 118 U. S. 120, 125 (1886); *King* v. *Morrall*, 6 Price 24, 146 Eng. Rep. 730 (1818).

[2] *Davis* v. *Corona Coal Co.*, 265 U. S. 219 (1924).

tions or of laches against it, the sovereign involved was the sovereign of the forum.[1] And even as to the local sovereign the rule of exemption is not necessarily absolute. This Court has intimated the possible existence of exceptions thereto.[2] State courts have occasionally insisted upon applying even to the state the local statute of limitations.[3] The New York statute of limitations, Civil Practice Act § 54, is expressed to govern actions by the State.

2. The principle upon which exemption from limitations has been accorded to the local sovereign in all the decided cases is one by its nature restricted to the sovereign of the forum and not applicable to a foreign sovereign who may resort to the courts of this country. For that principle is one

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[1] United States. *U. S.* v. *Kirkpatrick*, 9 Wheat. 720, 735 (1824); *U. S.* v. *Vanzandt*, 11 Wheat. 184, 190 (1826); *U. S.* v. *Nicholl*, 12 Wheat. 505, 509 (1827); *Dox* v. *Postmaster General*, 1 Pet. 318, 325 (1828); *Lindsey* v. *Miller*, 6 Pet. 666, 672 (1832); *Gibson* v. *Chouteau*, 13 Wall. 92, 99 (1871); *Armstrong* v. *Morrill*, 14 Wall. 120, 145 (1871); *Gaussen* v. *U. S.*, 97 U. S. 584, 590 (1878); *U. S.* v. *Thompson*, 98 U. S. 486, 488 (1878); *Minturn* v. *U. S.*, 106 U. S. 437, 444 (1882); *Steele* v. *U. S.*, 113 U. S. 128, 134 (1885); *U. S.* v. *Beebe*, 127 U. S. 338, 344 (1888); *U. S.* v. *Insley*, 130 U. S. 263, 266 (1889); *U. S.* v. *Dallas Military Road Co.*, 140 U. S. 599, 632 (1891); *U. S.* v. *Michigan*, 190 U. S. 379, 405 (1903); *Utah Power & Light Co.* v. *U. S.*, 243 U. S. 389, 409 (1917); *U. S.* v. *Whited & Wheless*, 246 U. S. 552, 561 (1918); *Chesapeake & Delaware Canal Co.* v. *U. S.*, 250 U. S. 123, 125 (1919); *DuPont deNemours & Co.* v. *Davis*, 264 U. S. 456, 462 (1924); *Davis* v. *Corona Coal Co.*, 265 U. S. 219 (1924); *U. S.* v. *Minnesota*, 270 U. S. 181 (1926); *U. S.* v. *Hoar*, 2 Mason 311, Fed. Cas. No. 15373 (1821); *U. S.* v. *Williams*, 5 McLean 133, Fed. Cas. 16721 (1850); *State ex rel Lott* v. *Brewer*, 64 Ala. 287, 296, 299 (1879); *Stoughton* v. *Baker*, 4 Mass. 521 (1808); *People* v. *Gilbert*, 18 Johnson 227 (New York 1820); *U. S.* v. *Brown*, 247 N. Y. 211 (1928).

England. *Magdalen College Case*, 11 Coke Rep. 66, 75a (1616); *Comyn Dig., Title Prerog.* D. 86. (*Cire.* 1695); *Cayzer Irvine & Co.* v. *Board of Trade*, [1927] 1 K. B. 269, 294 (dictum), [1927] A. C. 610.

Canada. *Humphrey* v. *The Queen*, 2 Can. Exch. 386, 390 (1891); *The Queen* v. *Black*, 6 Can. Exch. 236, 253 (1899).

[2] *Utah Power & Light Co.* v. *U. S.*, 243 U. S. 389, 409 (1917); *U. S.* v. *Michigan*, 190 U. S. 379, 405 (1903); *Bowers* v. *New York etc. Lighterage Co.*, 273 U. S. 346, 350 (1927).

[3] *Gathright* v. *State*, 129 Ark. 339, 195 SW 1069, 1070 (1917); cf. *In re Ash's Estate*, 202 Pa. St. 422, 51 Atl. 1030 (1902).

of *local* public policy. The formulation thereof made by Mr. Justice Story in 1821[1] was:

> "The true reason indeed why the law has determined that there can be no negligence or laches imputed to the crown and therefore no delay should bar its right . . . is to be found in the great public policy of preserving the public rights, revenues and property from injury and loss by the negligence of public officers."

This statement has been repeatedly adopted by this Court as the ground for the exemption in favor of the local sovereign.[2]

When the question arises whether the exemption should now be extended to the case of a foreign sovereign plaintiff in a United States court, it at once appears that the object of the rule cannot be attained in such a case and that the ground thereof does not extend to it. No public policy of the United States, nor any interest of its citizens, is served or advanced by protecting a foreign sovereign from the consequences of the negligence of its officers. *Cessante ratione cessat lex ipsa.* This Court has pointed out as much in a dictum in *French Republic* v. *Saratoga Vichy Spring Co.*, 191 U. S. 427, 437 (1903). That was an action by the French Republic as lessor and by its lessee for the unlawful use of a commercial name or trademark. The defense of laches was pleaded. This Court held that the interest of the French Republic in the litigation was so remote that it could not in any event avail of the rule *nullum tempus occurrit regi.* This Court also said:

> "It is at least open to doubt whether the maxim *nullum tempus,* applicable to our own government, can be invoked in behalf of a foreign government suing in

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[1] *U. S.* v. *Hoar,* Fed. Cas. No. 15373 (1821).

[2] *Fink* v. *O'Neil,* 106 U. S. 272, 281 (1882); *U. S.* v. *Nashville etc. R. Co.,* 118 U. S. 120, 125 (1886); *U. S.* v. *Thompson,* 98 U. S. 486, 489 (1878); *U. S.* v. *Knight,* 14 Pet. 301, 315 (1840).

> our courts. The doctrine is one of public policy, and is based upon the assumption that the officers of the government may be so busily engaged in the ordinary affairs of state as to neglect a vindication of its interests in the courts. Whether this exemption can be set up by a foreign government in the prosecution of suits against our own citizens—in other words, whether the latter are not entitled to the benefit of the ordinary defences at law, is a question which does not necessarily arise in this case, and as to which we are not called upon to express an opinion."

It was exactly for the reason that the rationale of the rule heretofore applied with respect to the local sovereign, does not extend to a foreign sovereign that the District Court, quoting part of the above language, decided in favor of the petitioner (R., 437-438). The Circuit Court of Appeals disregarded the rationale of the rule as expressed by this Court. In so doing it also disregarded the only decided cases in this country which have at all considered the question and which have unanimously reached the conclusion that a foreign sovereign plaintiff is bound by the statute of limitations of the forum. These cases are:

Commissioners of the Sinking Fund of Louisville v. *Buckner* (C. C. Ky. 1891), 48 F. 533, 536 (dictum);

Western Lunatic Asylum v. *Miller* (1887), 29 W. Va. 326, 1 S. E. 740;

U. S. v. *Brown* (1928), 247 N. Y. 211, 218 (dictum);

Royal Italian Government v. *International Committee of Y. M. C. A.*, 273 N. Y. 468 (1936).

3. In turning from this clearly indicated principle of decision, the Circuit Court of Appeals seems to have been influenced[1] by a misinterpretation of the dictum of this Court

[1] See R., 457, 91 F. (2d) 898, 899.

in *U. S.* v. *Nashville etc. R. Co.* (1886), 118 U. S. 120, 125 repeated from *U. S.* v. *Thompson* (1878), 98 U. S. 486, 489, 490. This dictum was that the principle of public policy above described is

> "applicable to all governments alike."

From these words it seems to have been inferred that it was the intention of this Court to say that the exemption from limitations accorded to the government of the forum is applicable and should be applied to foreign government plaintiffs. But that was clearly not the meaning of the words quoted. They are taken by this Court from the opinion of Mr. Justice Story in the leading case of *U. S.* v. *Hoar,* Fed. Cases No. 15,373 (1821). In that case, after using the language above quoted (p. 16), Mr. Justice Story continued:

> "And though this is sometimes called a prerogative right, it is in fact nothing more than a reservation or exception introduced for the public benefit and equally applicable to all governments."

Examination of his opinion shows that he was engaged in determining whether the English rule that no statute of limitations runs against the Crown, in the absence of an express provision to that effect, was taken over by the American states upon their separation from England. That question would depend upon whether the rule was a part of the royal prerogative or whether it was a general rule of English public policy. Mr. Justice Story determined that it was a general rule of English public policy, and of a nature which would apply to each government in its own territory, and so determined that the rule had been received by the State of Massachusetts as part of the English common law. He did not decide and did not say that the rule *nullum tempus occurrit regi* could be availed of by a foreign sovereign. That question was not before him.

The words "applicable to all governments," which appear several times in the opinions of this Court, are taken uniformly from this opinion of Mr. Justice Story and necessarily without any implication that they touch the question now presented. In fact the implication has been to the contrary. Mr. Justice Field, who employed the expression in *Gibson* v. *Chouteau*, 13 Wall. 92, 99 (1871), wrote the opinion in *State of Indiana* v. *State of Kentucky*, 136 U. S. 479, 510 (1889), which applies the principle of prescription in boundary questions between states of the Union, and cited therefor Vattel's statement that prescription founded on the lapse of time must be admitted between nations as a valid and incontestable title.[1]

In *U. S.* v. *Nashville etc. R. Co.*, in *U. S.* v. *Thompson*, and in *Gibson* v. *Chouteau*, the holding was that the local sovereign was exempt from the application of limitations, and the phrase "applicable to all governments alike" had no possible reference to a foreign sovereign.

4. A further ground of the decision below was that failure to accord to a foreign sovereign the exemption from limitations enjoyed by the local sovereign is to grant the former "less than full sovereign rights."[2] But this is not an argument at all. It is a commonplace that foreign sovereigns do not have full sovereign rights within the territory of the local sovereign. They cannot within the territory of the local sovereign levy taxes, raise an army, exercise the right of eminent domain. If they could, the local sovereign would have ceased to be master in his own house. It was for this reason that this Court in *Georgia* v. *Chattanooga*, 264 U. S. 472 (1924), held that property of the State of Georgia within the State of Tennessee was held by Georgia in a private, not a sovereign capacity. At page 481:

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[1] In *U. S.* v. *Beebe* (1888), 127 U. S. 338, 347, this Court said that the right of exemption from the statute of limitations is an

"exemption of the Government designed for the protection of the rights of the United States alone."

[2] See R., 458, 91 F. (2d) 898, 900.

> "The sovereignty of Georgia was not extended into Tennessee. Its enterprise in Tennessee is a private undertaking. It occupies the same position there as does a private corporation authorized to own and operate a railroad; and, as to that property, it cannot claim sovereign privilege or immunity."[1]

It is settled that a foreign sovereign who comes into a municipal court must play the role of a litigant like any other suitor, and that its suit is determined according to the rules applicable to private suitors in like cases. *U. S.* v. *National City Bank of New York*, 83 F. (2d) 236, 238, 239 (C. C. A. 2 1936), certiorari denied 299 U. S. 563. Within this rule a foreign sovereign plaintiff would unquestionably be held to be subject to the equitable doctrine of estoppel in respect of the subject-matter of the action. Yet the local sovereign is not subject to estoppel.[2] A foreign sovereign plaintiff is subject to the direction of the court with respect to discovery.[3] He can be obliged by the forum to post security for costs.[4] If he loses his case, he is ordered to pay costs.[5] Yet the local sovereign of course does not pay costs.

Sovereign immunity with respect to the subject-matter of this suit is precisely what the sovereign surrenders when he

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[1] So the Advocate-General Seguier said in the case of the *Hotel du Souverain*, Requêtes (1777) "Pourquoi donc un souverain serait-il exempt? Il n'est souverain que dans ses états." See the judgment of the Permanent Court of International Justice in *French Republic* v. *Government of the Serb-Croat-Slovene Kingdom*, July 12, 1929, 2 Hudson World Court Reports 344, 371.

[2] *Candler* v. *Lunsford*, 20 N. C. 407 (1839); *People* v. *Brown*, 67 Ill. 435, 438 (1873); *The Queen* v. *Black*, 6 Can. Exch. 236, 253 (1899); *Humphrey* v. *The Queen*, 2 Can. Exch. 386, 390 (1891).

[3] *King of Spain* v. *Hullett* (1833), 7 Bligh N. S. 359, 393; *Rothschild* v. *Queen of Portugal* (1839), 3 Y. & C. 594; *Prioleau* v. *U. S.* (1866), L. R. 2 Eq. 659; *U. S.* v. *Wagner* (1867), L. R. 2 Ch. App. 582; *Republic of Costa Rica* v. *Erlanger* (1875), L. R. 1 Ch. D. 171.

[4] *Republic of Honduras* v. *Soto* (1889), 112 N. Y. 310; *Emperor of Brazil* v. *Robinson* (1837), 5 Dowl. 522; *Otho King of Greece* v. *Wright* (1837), 6 Dowl. 12; *The Beatrice* (1866), 36 L. J. Adm. 10.

[5] *Gouvernement espagnol* v. *Veuve et heritiers d'Aguado* (Paris Court of Appeal 1867), Dalloz 1867, II. 49; *Queen of Holland* v. *Drucker* [1928] Ch. 877, 884.

invokes the jurisdiction of the municipal court. By so doing he necessarily subjects himself to the defenses arising by the law of such court, including the defense of limitations. If it be said that the defense of limitations results in the foreign sovereign's being deprived of his property right by reason of something which occurred before he sought the aid of the court (R., 458, 91 F[2d] 898, 900), the answer is that the sovereign had at all times entire liberty to sue, and that the barring of his suit by reason of tardiness in his exercise of that liberty does not destroy his property right, but merely terminates the remedy theretofore provided by the forum.[1] Here the remarks of Mr. Justice Story in the course of an opinion discussing the statute of limitations are pertinent:

> "Courts of law are instituted by every nation for its own convenience and benefit, and the nature of the remedies, and the time and manner of the proceedings, are regulated by its own views of justice and propriety, and fashioned by its own wants and customs. It is not obliged to depart from its own notions of judicial order, from mere comity to any foreign nation. It is sufficient, if it gives to foreigners the same means to enforce their rights, as it does to its own citizens."[2]

Where the policy of the forum so directed, this Court has not hesitated to apply a statutory rule so as to cut down the property right of a foreign sovereign. *The Scotland,* 105 U. S. 24 (1881). The Peruvian Government libelled a British ship for loss occasioned to a cargo, which that Government owned, by collision with another ship belonging to the owner of the Scotland. This Court, reversing the District Court, applied the rule of limited liability in admiralty and said (p. 31):

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[1] *Campbell* v. *Holt,* 115 U. S. 620, 626 (1885); *Lightfoot* v. *Davis,* 198 N. Y. 261, 264 (1910).

[2] *LeRoy* v. *Crowninshield,* 15 Fed. Cas. No. 8269, at p. 365, 2 Mason 151 (C. C. Massachusetts 1820).

"We see no reason, in the absence of any different law governing the case, why it should not be applied to foreign ships as well as to our own, whenever the parties choose to resort to our courts for redress."

C. THE RULE ADOPTED BY THE CIRCUIT COURT OF APPEALS IS IN CONFLICT WITH THE RULE APPLIED IN THE MUNICIPAL COURTS OF ALL OTHER COUNTRIES AND GIVES FOREIGN SOVEREIGNS A PRIVILEGE WHICH THE UNITED STATES ITSELF AS A SOVEREIGN PLAINTIFF WOULD ENJOY IN NO OTHER COUNTRY.

By the law of every foreign country, so far as appears, a foreign sovereign suitor is subject to the local rule of limitation or prescription. The United States if a plaintiff in any other country would find itself barred by the neglect or delay of its agents, and would be defeated by the defense which the Circuit Court of Appeals denies to American citizens in litigation with foreign sovereigns here. Thus the decision below creates a precedent of great significance to the international relations of the United States, to the distinct disadvantage of this country and its citizens as compared with the rest of the world.

In England a foreign sovereign plaintiff is bound with respect to all defenses exactly as a private corporation or person would be,[1] and hence would be barred by limitations. In the time of John Selden, in a case in which the King of Spain was a party, a writ of civil outlawry was issued against him so as to compel the payment of costs by the King upon penalty of his being barred from the privilege of the courts of England.[2] In France and other civil law countries whose law is based upon the Code Napoleon, the civil codes almost uniformly provide that the local sovereign is barred by prescription. The French Civil Code provides:

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[1] Westlake, Private International Law, 7th ed. 1925, page 272.

[2] Selden, Table Talk (F. Pollock Ed.), page 68; cf. Blackstone's Commentaries (Chase 3rd ed. 1903) page 763.

"Art. 2227. The state, public institutions, and municipalities are subject to the same rules of prescription as are private persons, and may invoke them likewise."

The same rule is deemed to apply to a foreign sovereign as a matter of course. Hence, the French period of limitations being thirty years, the suit of the Spanish Government in the Civil Tribunal of the Seine in 1863 for an accounting of financial transactions of its agent during 1826-31, was held by that Court and, on appeal, by the Paris Court of Appeal to be barred by limitations.[1] In Italy,[2] in Belgium,[3] in Holland,[4] in Portugal,[5] in Imperial Russia[6] and in Soviet Russia[7] likewise the statute of limitations or prescription is expressed to run against the local sovereign, and *a fortiori* would bar a foreign sovereign.

Both the Soviet and the Imperial Russian courts have held the government barred by the statute of limitations.[8] Hence if it were true that an American national who deals with a foreign sovereign must be presumed to do so with the implied understanding that the transaction is to be governed by the law of such sovereign (R., 463, 91 F[2d] at 902), plaintiff's assignor in this case would still be barred.

The Pan-American Code of Private International Law expressly provides that each contracting state, as a juridic

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[1] *Gouvernement espagnol* v. *Veuve et heritiers d'Aguado*, Dalloz 1867, I, 49.

[2] Civil Code, Art. 2114.

[3] Civil Code, Art. 2227; Law of May 15, 1846.

[4] Civil Code, Art. 1991.

[5] Civil Code, Art. 516.

[6] Civil Laws, Vol. X, Part 1, Art. 694 Note Annex Art. 1.

[7] Civil Code, Art. 44 as amended by Decree of December 10, 1934, Coll. of Law U. S. S. R. (1934) No. 43, Art. 258.

[8] *Administration of Siberian Railroads* v. *Representative of the Supreme Council of People's Economy*, Supreme Court, Civil Cass. Collegium, R. S. F. S. R. No. 31, 470 (1924), Coll. of Decisions Civil Cass. Collegium Supreme Court R. S. F. S. R. (1929) No. 40, page 51. *Treasury Chamber of Kostroma* v. *Lomachevsky*, Senate Civ. Cass. (1879) No. 0; *Birshenker* v. *Administrator of State Properties in the Government of Ekaterinoslav*, Ruling Senate Civ. Cass. (1879) No. 72.

person, shall be subject in the territory of the other contracting states to all the obligations of their law, including the rule of "prescription" or limitations.[1] This Code has been ratified to date by Cuba, Dominican Republic, Haiti, Guatemala, Honduras, Nicaragua, Costa Rica, Salvador, Bolivia, Brazil, Chile, Ecuador, Panama, Peru and Venezuela.[2] In addition the civil codes of practically all the Latin-American states provide that the local sovereign shall be subject to limitations or prescription,[3] and hence necessarily require that a foreign sovereign be similarly bound.

The Codes of Argentina and Paraguay specifically provide that foreign sovereigns are subject to the statute of limitations, as follows:

> "Art. 34. Also foreign states . . . are juridic persons.
> Art. 3951. The national or provincial state and all juridic persons are subject to the same prescriptions as private individuals, with regard to their properties or rights which are susceptible of being private property, and they may likewise invoke prescription."

The cases are numerous in the Latin-American states in which the local sovereign has been barred by limitations.[4]

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[1] Arts. 31, 229, 231.

[2] Treaty Information Cumulative Index (Washington 1937) page 67; Anuario de la Legislacion Peruana (1928) page 120.

[3] Argentina, Civil Code Arts. 33, 34, 3951; Brazil, Civil Code Arts. 13, 14, 163; Chile, Civil Code Art. 2497; Colombia, Law 153 of 1887, Art. 80, Civil Code Art. 2517; Costa Rica, Civil Code Arts. 6, 15, 27; Cuba, Civil Code Arts. 35, 1932; Dominican Republic, Civil Code Art. 2227; Ecuador, Civil Code Art. 2479; Guatemala, Civil Code Arts. 15, 1050; Haiti, Civil Code Art. 1995; Honduras, Civil Code Arts. 56, 2265; Mexico, Civil Code for Federal District and Territories Arts. 25, 1137, 1148; Nicaragua, Civil Code Art. 878; Panama, Civil Code Arts. 64, 1670; Paraguay, Civil Code Arts. 33, 34, 3951; Peru, Law of October 4, 1901, Art. 1, Law No. 2247 December 5, 1902; Salvador, Civil Code Art. 2407; Uruguay, Civil Code Arts. 21, 1194; Venezuela, Civil Code Arts. 17, 2032.

[4] For example, *Province of Buenos Aires* v. *Mar del Plata Club*, 20 Jurisprudencia Argentina 575 (Argentina 1926); *Nation* v. *Zapata* 28 Gaceta Judicial 96 (Colombia 1920); *Treasury* v. *Urriaga*, Gaceta de los Tribunales 1883, page 1129 (Chile).

While the question of limitations with reference to a foreign sovereign plaintiff appears never to have arisen in those countries, the Supreme Court of Chile in actions by the Bolivian Government has treated the foreign sovereign in every respect as a private litigant subject to counterclaim and in all other respects to the law of the forum.[1]

In Spain the Civil Code, Art. 1932, provides that juridic persons are subject to prescription or limitations; and juridic persons are held to comprise foreign sovereigns.[2]

Against this uniform current of authority in all other countries of the world, the decision of the Circuit Court of Appeals stands as a solitary and unfortunate precedent opening to foreign states in our courts privileges which the United States itself would receive in no other country. Though it be true that a right accorded to a foreign sovereign by our law will not be withdrawn because that sovereign does not in his own country accord the right to us,[3] we submit that the United States courts should not be alert to create new distinctions of the same kind to the disadvantage of their own nationals and indeed to the disadvantage of the United States itself.[4] The rule announced by the Circuit Court of Appeals exposes every American national to litigation by every foreign sovereign with whom at any time in the past and over whatever period he has had business relations. In an era when foreign sovereigns are more and more gathering into their own hands the entirety of the business affairs conducted in their territories, such an innovation is especially undesirable.

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[1] *Inscription of Real Estate of the Government of Bolivia*, Gaceta de los Tribunales 1912 Vol. II, page 813; *Government of Bolivia* v. *Banco Guarantizador de Valores*, Gaceta de los Tribunales 1896, Vol. I, page 35.

[2] Lasala-Llanas, Sistema de Derecho Civil International e Interregional (Madrid 1933), page 96.

[3] *The Pesaro*, 271 U. S. 562 (1926).

[4] In a careful study of the decision below a note in 47 Yale Law Journal 132, November 1937, reaches the conclusion (p. 135):

> "The rule in the instant case extends sovereign immunities into a field where they serve no useful purpose but defeat an underlying policy of another sovereign government [i.e. the United States]."

POINT II.

The Circuit Court of Appeals erred in holding that the giving of due effect to the Soviet assignment to the United States required it to disregard the statute of limitations of the forum.

The decision below seems to have been influenced in great part by the belief that the due control of international relations by the Federal Government requires a disregard of the state statute of limitations in this case (R., 458, 462, 91 F. [2d] at 900, 901-2). Words employed by this Court in *U. S.* v. *Belmont*, 301 U. S. 324, were quoted in support of that conclusion.

It is respectfully submitted that any such conclusion is an entire misapprehension of what this Court decided in the *Belmont* case. This fact would in itself require a review for the purpose of correcting the error.

In the *Belmont* case this Court expressly warned against any attempt to extend its precise holding there, saying (pp. 332-3, 337) that the decision dealt only with the case presented and the parties before the Court, did not affect adverse claims of others not parties, and did not foreclose the assertion of adverse claims to the fund involved. The case had come up by certiorari from a judgment dismissing the complaint upon its face. 85 F. (2d) 542. The sole question involved below and the sole question considered by this Court upon review was the public policy of New York and of the United States with regard to the *enforcement of foreign confiscatory decrees*. The defendant had no interest in the fund other than that of a custodian. This single fact was made the ground of the refusal of the Court to treat the question of public policy as properly raised (pp. 332, 337).

In the instant case defendant invokes, not a rule of policy either state or federal, but the statute law of New York made applicable in the United States courts by the statute law of

the United States.[1] In the instant case defendant is not a stakeholder, but a *bona fide* adverse claimant whose claim, maintained ever since February 25, 1918 (R., 128-129), is set forth in the findings of the District Court (R., 431) and acknowledged by the Circuit Court of Appeals (R., 456, 462 "adverse claim"; 91 F. [2d] at 899, 902).

In this obvious disparity between the cases, it would seem unnecessary to argue that the language used by the majority in the *Belmont* case does not constitute a rule of decision for the instant case. That language was to the effect that in an action to enforce an undertaking by the United States in pursuance of the conduct of foreign relations,

> "state constitutions, state laws and state policies are irrelevant to the inquiry and decision."

These words obviously had reference to the definition of the public policy of New York as fixed by the State Constitution and laws which respondents in the *Belmont* case quoted in their brief.[2] It cannot possibly be inferred that this Court, in taking from that definition the phrase "state laws", decided or intended to decide that an action brought by the United States to recover upon a claim assigned to it by a foreign power, is free of the state statutes of limitations. For not only is it perfectly apparent that this Court in the *Belmont* case did not address itself to the present question at all; but the principle there announced could not apply to the present case, because the invocation of the statute of limitations by this defendant does not impede the conduct of foreign relations by the United States, while the defense of public policy raised in the *Belmont* case would have applied equally to every article of private Russian property involved in the Soviet assignment and so might have impeded the execution by the United States of that assignment.

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[1] Rules of Decision Act, 28 United States Code §725, Rev. Stat. §721.

[2] Respondents' brief page 38, quoting *People* v. *Hawkins*, 157 N. Y. 1, 12:

> "The courts . . . have held that a state can have no public policy except what is to be found in its constitution and laws."

POINT III.

The Circuit Court of Appeals erred in disregarding the high public policy which attaches in both municipal and international law to the principle of repose embodied in prescription and limitations.

The doctrine of sovereign immunity, which in the opinion of the Circuit Court of Appeals militates against the defense of limitations, is one of the policy of the forum.[1] The doctrine of limitations is of longer standing in our law and rests on a plane of policy equally high, in that it is considered necessary to the administration of justice that legal disputes be settled while the evidence is fresh. In the history of our law statutes of limitation with respect to real property have been enforced since the twelfth century, and statutes of limitation with respect to choses in action since the sixteenth century.[2]

This Court has abundantly recognized the wisdom and policy of prescription and statutes of limitation, regarding them as vital to the welfare of society and as promoting repose by giving security and stability to human affairs.[3] In *Wood* v. *Carpenter* (1879), 101 U. S. 135, 139, this Court said:

> "Statutes of limitation are vital to the welfare of society and are favored in the law. They are found and approved in all systems of enlightened jurisprudence. They promote repose by giving security and stability to human affairs. An important public policy lies at their foundation. They stimulate to activity and punish negligence. While time is constantly destroying the evi-

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[1] Ernest Angell, "Sovereign Immunity", 35 Yale Law Journal 150, 152.

[2] *Brooklyn Bank* v. *Barnaby*, 197 N. Y. 210, 227 (1910).

[3] *U. S.* v. *Oregon Lumber Company*, 260 U. S. 290, 299 (1922); *Campbell* v. *Haverhill*, 155 U. S. 610, 617 (1895); *Wood* v. *Carpenter*, 101 U. S. 135, 139 (1879).

> dence of rights, they supply its place by a presumption which renders proof unnecessary."

Hence this Court has consistently applied the principle of acquisitive prescription as between states of the Union in litigations affecting boundary.[1]

Even in international arbitrations, where no statutory period of prescription or limitation is available to bind the sovereign litigants, the principle of prescription and loss of rights by lapse of time is nevertheless fully recognized and is based upon "practical considerations of order, of stability, and of peace."[2] As is said by Wharton:

> "It must be remembered that statutes of limitations are simply formal expressions of a great principle of peace which is at the foundation not only of our own common law, but of all other systems of civilized jurisprudence. It is good for society that there should come a period when litigation to assert alleged rights should cease; and this principle, which thus limits litigation when wrongs are old and evidence faded, is as essential to the administration of justice as is the principle that sustains litigation when wrongs are recent and evidence fresh."[3]

Hence even in international arbitrations claims are barred for lapse of time.[4] While there are a few exceptions to the

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[1] *Rhode Island* v. *Massachusetts*, 4 How. 591, 639 (1846); *Indiana* v. *Kentucky*, 136 U. S. 479, 510 (1890); *Louisiana* v. *Mississippi*, 202 U. S. 1, 53 (1906); *Maryland* v. *West Virginia*, 217 U. S. 1, 42 (1910); *Michigan* v. *Wisconsin*, 270 U. S. 295, 308 (1925).

[2] Rules of prescription adopted by Institute of International Law, Annuaire (1925) page 558; 19 Am. Journ. Int. Law 760. See Resolutions I and IV.

[3] Note in 3 Wharton International Law Digest (2nd ed.) 972 § 239 Appendix, quoting this Court's language in *Wood* v. *Carpenter*, 101 U. S. 139.

[4] *Mossman Case*, Mexican-American Claims Commission of 1868, Moore Int. Arb. page 4180; *Williams Case*, American-Venezuelan Claims Commission of 1885, Moore Int. Arb. page 4181; *Cadiz Case*, American-Venezuelan Claims Commission of 1885, Moore Int. Arb. pages 4199, 4203; *Spader Case*, Venezuelan Arbitration of 1903, page 161; *Gentini Case*, Venezuelan Arbitration of 1903, page 720; *Sarropoulos* v. *Bulgaria*, 7 Recueil T. A. M. (1928) 51.

general rule of the application of prescription to sovereign states, those exceptions may be reduced merely to a holding that municipal statutes of limitations do not run in international tribunals or that the sovereign litigants waive prescription by executing a submission to arbitration.[1] The general rule remains, as stated by the Mixed Arbitral Tribunal in *Sarropoulos* v. *Bulgaria*, 7 *Tribunaux Arbitraux Mixtes* 47, 51 (1927):

> "Prescription, an integral and necessary part of every system of law, must be admitted in international law."

The long acceptance and firm establishment of this rule even in litigation between sovereigns, and the high public policy which the Court of the forum has always recognized as inherent in it, should be determinative of the question here presented. Even as to the local sovereign, exemption from the operation of the rule has been denied by this Court where state statutory restrictions of remedial rights involve a recognized policy:

Fink v. *O'Neil*, 106 U. S. 272, 280 (1882);
U. S. v. *Knight*, 14 Pet. 301, 315 (1840);
U. S. v. *Harpootlian*, 24 F. (2d) 646, 649 (C. C. A. 2, 1928).

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[1] The two instances noted by the Circuit Court of Appeals, R. 465, 91 F. (2d) at 903, are among these exceptions. With reference to the *Cook* case, the Editor's note in Annual Digest of Public International Law Cases 1927-8, page 265, states that extinctive prescription has long been recognized by a series of international awards. In *The Pious Fund of the Californias*, For. Rel. 1902, App. II, page 63, the brief of the United States argues that Mexico's execution of the submission to arbitration was a waiver of the defense of limitations.

CONCLUSION.

This case involves matters of novel impression and first importance which should be reviewed by this Court, and a writ of certiorari should issue for that purpose as prayed in the foregoing petition.

Respectfully submitted,

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